ties are brought into relation with each other by reason of the fact that at least one of them is directly engaged in maritime affairs, representing a ship or her owners. It should be noted that the court proposes this test not as a substitute for the recognized one as to locality, but merely as a qualification upon it.

The chief arguments which suggest themselves in favor of the new doctrine are that it seems reasonable to restrict admiralty jurisdiction to matters which are in themselves of a maritime nature; that the new view is the result of a finer analysis of the nature of admiralty jurisdiction than has heretofore been made; and that, as indicated above, its adoption does not involve the actual overruling of previous decisions.

In considering these arguments, some investigation into the history of admiralty jurisdiction seems necessary. At the time of the Black Book, admiralty jurisdiction over both torts and contracts seems to have depended primarily on the place where the tort was committed or the contract made. See *De Lovio* v. *Boit*, 2 Gall. (U. S. Circ. Ct.) 398, 403 ff. In torts, this remained an undisputed test, and even in contracts efforts were made for a long time to restrict the jurisdiction by the same standard. *Bene* v. *Wilcocks*, Dyer, 159, n. 38. It was, however, finally recognized that the jurisdiction over contracts was, to some extent at least, independent of locality. *Anon.*, Winch 8. *Cf.* BENEDICT, ADM. PRAC., 3d ed., § 48. And that branch of the law by a gradual working away from the early locality test reached its present position, that jurisdiction depends on whether the transaction itself is of a maritime nature. *Insurance Co.* v. *Dunham*, 11 Wall. (U. S. Sup. Ct.) 1. The reason for this departure was, perhaps, the practical one that the locality test often gave undesirable results. Thus a court of admiralty should obviously have jurisdiction over charter-parties, even though made on land, whereas it is clearly impracticable for it to assume jurisdiction over a mortgage of realty merely because made at sea. Hence the original test of locality, being inappropriate to contracts, was discarded; but in torts, where its practical results were satisfactory, it was retained.

It is believed, therefore, that the doctrine of the principal case in qualifying the locality test as applied to torts, infringes a rule which originated in the very nature of admiralty jurisdiction, and which has been satisfactory in its practical operation. This test has been all but universally regarded as the sole one. See *The Plymouth*, *supra*. The single authority to the contrary is the somewhat obscurely stated *dictum* of a text-writer. BENEDICT, *supra*, § 308. The principal case seems, then, at variance with the spirit of the previous cases, even though reconcilable with the points actually decided. Not only would the adoption of its doctrine unsettle a rule which has long been assumed to be law, but it would make the question of jurisdiction over torts subject to the difficulty which so often perplexes cases of contract, namely, the necessity of deciding in each case what is a maritime relation. The decision in the principal case seems therefore unfortunate as increasing complication and uncertainty in the law without, apparently, securing any practical gain to compensate for these disadvantages.

CONSTITUTIONALITY OF STATE INTERFERENCE WITH CONTRACT RIGHTS OF A MUNICIPALITY. — The extent to which a state legislature may constitutionally interfere with the property and privileges of a municipal corporation, was recently brought into question in the Massachusetts courts. A

city, in granting the use of its streets to a street railway company, had imposed on the company the obligation of paving between its tracks. A state statute releasing this obligation, and substituting a money payment equal to the cost of paving, was held valid. *City of Springfield* v. *Springfield St. Ry. Co.*, 64 N. E. Rep. 577. It seems clear that the company, in accepting the license, given on condition that the paving be done, assumed a contractual duty to keep up this work, until the license should be withdrawn, or the city's power to continue it destroyed. That powers of this sort contained in a city charter, — and in fact that the charter itself may be revoked at the discretion of the legislature, is a well-settled general principle; for the city government is regarded as a local instrument of state sovereignty. *People* v. *Morris*, 13 Wend. (N. Y.) 325. But in the principal case the point was raised that the revocation of the power to continue the license resulted in the impairment of the obligation of contract. Despite the fact that the court dismissed this objection with slight discussion, it raises a somewhat intricate question.

As the charter powers of the city were in their nature revocable privileges and not grants, the attempt by the city to make them the basis of vested contract rights, was an unwarranted use of the privileges, so far as it tended to deprive the state of its power of revocation. To this extent the effort of the city to establish a permanent contract right upon a revocable license was a wrong upon the state, and the Federal Constitution could scarcely be invoked to maintain it. But even assuming this contract right to be valid and binding in every respect, the constitutional objection might be met upon a broader ground. The effect of the state statute was twofold: the right to sue upon the obligation was taken from the municipal corporation and given to the state for the benefit of the city's inhabitants; and the nature of the obligation itself was altered. The alleged impairment must be found, if at all, in one of these changes.

The power to take away the legal title to the obligation, and either exercise or transfer the right to sue upon it, must be included in the sovereign's power to destroy the municipal corporation as a legal entity. The position of the city would seem analogous to that of a trustee, who cannot complain that the right to sue upon a contract, made for the benefit of his *cestui que trust*, is transferred by the court to another trustee. Hence, so long as the interests of the inhabitants of the city are protected it would seem immaterial what agency exercises the protection.

The question then arises, did the substitution of one kind of obligation for another constitute an impairment? And the answer depends upon whether there was in the real nature of the inhabitants' rights in municipal property anything which would be violated by such a change. The opinion has been very ably advanced by some courts that municipal property is at the absolute disposal of the legislature. *Darlington* v. *The Mayor*, 31 N. Y. 164. It would follow from this that contract rights may be entirely destroyed by the legislature. *Cf. State of Md.* v. *Baltimore & Oh. R. R. Co.*, 12 Gill & Johns. (U. S. Sup. Ct.) 399. On the other hand, some decisions deny the right of the legislature to control municipal property acquired for purposes peculiarly local. *People* v. *Hurlbut*, 24 Mich. 44. On strict principle it is difficult to explain what vested rights the inhabitants of a city can possess in municipal property. Yet natural justice and the weight of authority make it clear that property which has been acquired at the expense of the community cannot be entirely taken away. But nearly all courts would agree that while the state cannot divert such property from the general purpose for

which it is held, yet it may exercise over it a large measure of control. See *Terret* v. *Taylor*, 9 Cranch (U. S. Sup. Ct.) 43, at 52. It would follow that no right of the inhabitants was violated in the principal case, by changing the form of the obligation, without altering its value or purpose. The statute was apparently analogous to a law changing the investment of trust funds. It would seem, therefore, that whether this right of the city be viewed as a wrongful product of a limited municipal power, or as a valid and lawful contractual right, the change which was made should not be regarded as unconstitutional.

STATUS OF CUBA UNDER THE AMERICAN MILITARY GOVERNMENT. — A recent case deals with the question whether Cuba, when under our military government, was a "foreign country," not merely within the meaning of particular statutes, but in the full sense of the term. A murder was committed on the high seas on a ship registered at Havana under the American provisional government. The United States Circuit Court, before which the murderer was brought, held that it had no jurisdiction since the ship was "an extension of a foreign country." *United States* v. *Assia*, 28 N. Y. L. J. 433 (Circ. Ct., E. D. N. Y.).[1] The decision would seem to be clearly correct, and goes little beyond a holding of the Supreme Court that an act of Congress providing for extradition to "foreign countries" applied to Cuba. *Neely* v. *Henkel*, 180 U. S. 109.

These cases bring out strongly the American doctrine as to the effect of military occupation by the United States upon the status of the country occupied. The actual sovereignty of the United States over Cuba was complete; Spain had by treaty renounced all her rights, and there was scarcely a trace of a native Cuban government. The provisional government established by the President was complete in organization, and prepared for an indefinite existence. The old international doctrine would not have considered territory so held as "foreign," and subsequent modifications of that doctrine have not been fully accepted. See HALL, INTERNAT. LAW, 4th ed. 481. The peculiar character of our government, however, clearly necessitates the adoption of a different rule. International law requires assent by the incorporating state before incorporation is deemed complete, but allows each country to determine who shall have authority to represent it in giving such assent. In England this power is exercised by the Crown. Conquest and military occupation imply valid assent and make conquered territory part of the empire. *Campbell* v. *Hall*, 1 Cowper 204; see TAYLOR, INTERNAT. LAW 600; but also HALL, *supra*. In the United States, however, the power of assent is vested by the Constitution in the President and Congress. The President can exercise complete authority over territory under his military control. *New Orleans* v. *Steamship Co.*, 20 Wall (U. S. Sup. Ct.) 387. But he cannot without the co-operation of Congress incorporate such territory into the Union. *Fleming* v. *Page*, 9 How. (U. S. Sup. Ct.) 603; *Cross* v. *Harrison*, 16 ibid. 164. Under this strict division of powers the United States may well have full actual sovereignty over territory which remains foreign. It is true that such control imposes on the United States the usual responsibilities of the sovereign to other nations. The importance,

[1] When the case appears in the regular reports it will be noted among Recent Cases in a subsequent issue.